



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

January 30, 2008

VIA E-MAIL and U.S. MAIL

Mr. Greg Cochran, Director
Michigan Dioxin Initiative
Michigan Operations
The Dow Chemical Company
1790 Building, Washington Street
Midland, Michigan 48674

Dear Mr. Cochran:

As you may be aware, after the negotiations on a federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) order for the Tittabawassee River, Saginaw River, and Saginaw Bay were terminated, the Michigan Department of Environmental Quality (MDEQ) met with Regional Administrator Mary A. Gade, U.S. Environmental Protection Agency, Region 5 (U.S. EPA), on January 15, 2008, to discuss the direction of the investigation and cleanup of the Tittabawassee River, Saginaw River, Saginaw Bay, and Midland area. During this meeting, the MDEQ and the U.S. EPA agreed that corrective action work will continue to be conducted under the federal Resource Conservation and Recovery Act and Part 111, Hazardous Waste Management, of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, with the U.S. EPA coordinating with the MDEQ to provide CERCLA federal removal actions/interim response activity support and other technical assistance, as necessary.

With respect to the issue of cleanup criteria, I have spoken to the U.S. EPA regarding The Dow Chemical Company's (Dow) interest in possibly pursuing a site-specific cleanup standard in lieu of the generic residential soil cleanup criterion of 90 parts per trillion (ppt). As you know, and as I informed the U.S. EPA, the January 2005 Framework for an Agreement (Framework) provides Dow with the flexibility to pursue a bioavailability study and/or development of potential site-specific cleanup criteria for areas of off-site contamination. This Framework calls for the MDEQ to establish an independent science advisory panel (ISAP) to review the results of the proposed bioavailability value and Dow's protocol for developing site-specific criteria and make recommendations to the MDEQ and Dow, with the protocol and any such potential criteria being subject to MDEQ approval. With such approval, the MDEQ would consider (and U.S. EPA is aware of this) the site-specific criteria to supplant the 90 ppt as an Applicable or Relevant and Appropriate Requirement even in a CERCLA context.

Because the Direct Contact Criteria (DCC) Report did not meet our expectations or the intent of the Framework and has not been useful in moving this matter forward, the MDEQ remains concerned about potential delays associated with the DCC Report, ISAP process, and implementation of the next phase of the remedial investigation for the Midland Area Soils Area of Concern. However, pursuant to the Framework, the MDEQ remains open to discussions regarding presumptive remedies or other alternate approaches acceptable to the agency in lieu of Dow's proposed DCC Report process for development of site-specific criteria. To that end, my staff met with Dow staff, a representative from the city of Midland, and Miller, Canfield, Paddock and Stone, P.L.C., staff on January 23, 2008, to discuss Dow's conceptual proposal of presumptive remedies for Midland. The MDEQ is committed to responding to Dow proposals in this regard if they meet the MDEQ's need to protect public health and will expedite final remedial action for the area(s) of concern.

The MDEQ is hopeful that we can collaborate over the next few months to move this process forward. Should you wish to discuss this further, please contact Mr. Jim Sygo, Deputy Director, at 517-241-7394.

Sincerely,



Steven E. Chester
Director
517-373-7917

cc: Mr. David Dupre, Vice President, Dow
Mr. Peter Wright, Dow
Ms. Mary A. Gade, Regional Administrator, U.S. EPA
Mr. Ralph Dollhopf, U.S. EPA
Mr. Greg Rudloff, U.S. EPA
Mr. Stanley F. Pruss, Governor's Office
Mr. Robert P. Reichel, Michigan Department of Attorney General
Mr. Jim Sygo, Deputy Director, MDEQ
Ms. JoAnn Merrick, Chief of Staff, MDEQ
Mr. Frank Ruswick, Senior Policy Advisor, MDEQ
Mr. George Bruchmann, MDEQ